IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12832 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECEASED ASNANI TARACHAND POONAMCHAND

Versus

STATE OF GUAJRAT

Appearance:

MR MK OZA for Petitioners No. 1-1/5

MS SEJAL K MANDAVIA for Respondent No. 2

MR PR ABICHANDANI, AGP, for Respondents No. 1 & 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 14/12/2001

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri P.R. Abichandani for respondents Nos. 1 and 3

whereas learned advocate Ms. Sejal Mandavia waives service of rule for respondent No. 2.

2. The grievance which the petitioner has made in this petition is with regard to the non-payment of pension to late Shri Tarachand Poonamchand Asnani. The petitioners are legal heirs of late Shri Asnani, who had initially filed the petition, but during the pendency of the petition he expired and, therefore, the present petitioners have been joined as petitioners.

3. It has been submitted by learned advocate Shri M.K. Oza appearing for the petitioners that late Shri Asnani was working as a Senior Clerk in Pakistan and after the war, which our country had with Pakistan in 1971, late Shri Asnani had migrated to India. In 1978, he became a citizen of India and thereafter he had joined Agricultural Department of the Government of Gujarat in 1988 as Clerk. On 31.1.1997, late Shri Asnani had retired and thus he had rendered service of approximately 8 years and 6 months to the State of Gujarat.

4. It has been submitted by learned advocate Shri Oza that in ordinary circumstances late Shri Asnani could not have received pension as he had no pensionable service. However, he has referred to some of the resolutions and has stated that service rendered by late Shri Asnani in Pakistan can be added in the service which late Shri Asnani had rendered to the State of Gujarat. The break which late Shri Asnani had in the service could also have been condoned. He has also referred to the representations made by late Shri Asnani dated 19.5.1990 and 15.3.1999 to the Government of Gujarat in the Department of Agriculture and to the Hon'ble Minister for Agricutlure and Rural Development Department, respectively. It has been submitted by him that in spite of the said two representations, the respondent authorities did not give any reply and did not do the needful for condoning the break in service and treating service of late Shri Asnani as pensionable service. It has been, therefore, submitted by learned advocate Shri Oza that this court should give direction to the respondents to the effect that service rendered by late Shri Asnani to Pakistan Government should be added to the service rendered by late Shri Asnani to the State of Gujarat and thereby service of late Shri Asnani should be treated as pensionable service rendered to the State of Gujarat and after condoning the break in service between two services rendered by Shri Asnani, pension payable to late Shri Asnani should be calculated and the said amount should be paid to the petitioners as his legal heirs.

5. On the other hand, learned AGP Shri Abichandani appearing for respondents Nos. 1 and 3 has relied upon the affidavit-in-reply filed by Shri D.S. Vansola, Deputy Director of Pension & Provident Fund, Ahmedabad, and has submitted that as late Shri Asnani had not rendered pensionable service, there was no question of giving any pension to late Shri Asnani or family pension to widow of late Shri Asnani. He has relied upon the averment made in para 5 of the affidavit-in-reply filed by Shri Vansola. It has been stated by him that so as to avail advantage of addition of service rendered in Pakistan to the service rendered by the petitioner to the State of Gujarat, it was necessary for the petitioner to adduce some evidence with regard to service rendered by him to Pakistan Government. According to him, no evidence was adduced by late Shri Asnani to the State of Gujarat or to the concerned department in pursuance of Government Resolutions dated 17.4.1967 and 13.1.1955. In the circumstances, as per case of the respondents, late Shri Asnani was not entitled to any pension as he had not rendered pensionable service.

6. I have heard the learned advocates and have gone through the record pertaining to the case. Upon perusal of the record, it appears that late Shri Asnani had addressed a letter dated 19.5.1990 to the Secretary, Govt. of Gujarat in the Department of Agriculture (Anx. E p. 70) whereby he had made a request to add service rendered by him to Pakistan Government to the service rendered by him to the State of Gujarat. It appears from the said letter that some documents were also annexed to the said letter as evidence of service rendered to Pakistan Government. As late Shri Asnani did not get any reply to the said letter, he was constrained to address a letter dated 15.3.199 (Anx.F p. 20) to the Hon'ble Minister for Agriculture & Rural Development Department. In the said letter he had referred to the earlier letter and had narrated the circumstances in which he was constrained to migrate to India and had made an effort to make out a case for getting pension from the Govt. of Gujarat.

7. It appears that the above-referred two letters have not been looked into by any authority because there does not appear to be any reply to the said letters. Even the affidavit-in-reply filed by the respondent authorities are silent on the said letters. When the learned AGP was asked whether the said letters were considered, he was unable to answer and, therefore, prima facie, it appears that the evidence which late Shri

Asnani had produced so as to enable him to get pensionable service from the State of Gujarat was not looked into properly.

8. As the petition involves disputed questions of fact, it would not be proper to pass any final order because it is not known as to what evidence was adduced and whether the evidence adduced by late Shri Asnani was sufficient to make his service pensionable as per the resolutions referred to hereinabove.

9. In the circumstances, the ends of justice would meet if the respondent authorities are directed to look into the averments made in the petition and more particularly to the contents of two letters referred to hereinabove and take a fresh decision whether late Shri Asnani was in fact entitled to the pension. If legal heirs of late Shri Asnani desire to adduce any further evidence, it would be open to them to place a further representation along with this petition and a copy of the petition and further evidence, if any, shall be forwarded to respondent No. 1 along with a copy of this order. As stated hereinabove, the entire petition and the further representation shall be looked into objectively by the Secretary, Agriculture and Rural Development Department within a period of 3 months from the date of receipt of the order and he shall pass appropriate order on the representation. If he comes to a conclusion that late Shri Asnani was having pensionable service, the pecuniary benefits due to him shall be calculated and shall be given to the present petitioners. If he comes to a conclusion that late Shri Asnani was not having pensionable service, he shall communicate the said decision along with the reasons recorded by him to one of the petitioners within 10 days from the date of taking final decision.

10. In view of above direction, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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